

REMARKS

The specification has been amended to indicate that the plant was first propagated in Rijsenhout, the Netherlands. (The opportunity was taken to make some other self-evident, minor changes.) The change should overcome the rejection of claim 1 under the first and second paragraphs of 35 USC 112. Should the Examiner believe other language is more appropriate, she is asked to contact the undersigned.

The rejection of claim 1 under 35 USC 102 as anticipated by QZ PBR 011851, which was said to be published more than one year prior to the filing date of the present application, in view of the earlier admission that the cultivar was on sale in the Netherlands in December 2001 is respectfully traversed.

The Examiner is directed to the comments in the first full paragraph of page 4 of the Amendment Under 37 CFR 1.111 filed August 17, 2004. Reference in that portion of the reply was to the PBR application and grant, copies of which had been provided. Applicant pointed out that the PBR application date was November 21, 2001 while the denomination 'Sizzleness' was proposed March 28, 2003, less than a year before the present case was filed.

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The Examiner is asked to review the copy of the PBR application to see that the provisional designation was 99.2058-00, the breeder's reference no. See too the November 30, 2001 letter from the Community Plant Variety Office (CPVO) to assignee containing the provisional designation and the January 27, 2003 UK Plant Variety Rights Office Report on Technical Examination with the same breeder's reference no. No request was made to denominate the cultivar as 'Sizzleness' until March 28, 2003; see the next-to-last document in the last submission.

One of ordinary skill in the art would be unable until the denomination was proposed to make any type of association between the sale and the PBR. Because the denomination was proposed less than a year before the present case was filed, no proper rejection can be made and the claim is allowable. The rejection should be withdrawn. Should the rejection be maintained, the Examiner is asked to explain on the record her position that one would be aware of a PBR application for 'Sizzleness' before a request was made to denominate the cultivar.

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The Examiner is requested to telephone the undersigned if additional changes are required in the case prior to allowance.

Respectfully submitted,

PARKHURST & WENDEL, L.L.P.

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Date

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